

REMARKS

Claims 1-15 are pending in the application. Reconsideration of this application is respectfully requested.

Claim 11 was objected to by the Office regarding informalities cited therein. The informalities have been addressed and corrected by the clarifying amendment of claim 11, as indicated above in the claim listing. In particular, "said second offer" has been amended to read -- said second term of offer--. Thus, it is respectfully requested that the objection to claim 11 be reconsidered and withdrawn.

The Office Action rejects claims 1-15 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is traversed.

Regarding the 35 U.S.C. 112, second paragraph, rejection of claims 1-15, claims 1, 13, and 14 have been amended to clarify that the "adjusting" is done to the "second term of offer." Amended claims 1, 13, and 14 are clear and unambiguous, thereby overcoming the 35 U.S.C. 112, second paragraph rejection. Accordingly, it is respectfully requested that the 35 USC 112, second paragraph rejection of claims 1 - 15 be reconsidered and withdrawn

The Office Action rejects claims 1-9, 11, and 13-15 under 35 USC 103(a) as being unpatentable over Hager et al. (hereinafter Hager). This rejection is traversed.

The Office Action states that Hager discloses or inherently teaches the limitations of Applicants' claims including requesting a term of offer related to items; obtaining, by a host provider, the requested term of offer from at least one product/service provider (i.e., store); adjusting an offer to (by identifying sales and coupons for items at specific stores/manufacturers); and presenting the offers to a data requestor device.

The Office Action admits that Hager fails to disclose the step of adjusting the second term of offer for the item comprising determining if the host provider itself offers the item. However, the Office Action argues that it would have been obvious to one skilled in the art at the time of the invention to modify Hager to include the step of adjusting the second term of offer for the item if were determined the host provider itself offered the item since it would have been obvious for a service company to check its own resources before seeking others to provide the service, in order to maximize profits.

The Office Action's arguments of record in support of the 35 USC 103(a) rejection of claims 1-9, 11, and 13-15 are erroneous, lack support in the cited and relied upon Hager reference, and improperly rely upon impermissible hindsight reasoning.

Hager is directed to and discloses an internet based consumer shopping tool to provide actual store pricing and inventory information to a consumer, and facilitates retailer's promotional and customer loyalty programs. (Hager, paragraphs 0005 - 0006) Hager discloses a comparative shopping tool that uses the internet to facilitate the comparative shopping by, for example, delivering the pricing information from a number of stores to a consumer located remotely from the stores via the internet. (Hager, Fig. 1) Hager further discloses utilizing specialized tags (i.e., an Electronic Shelf Label (EFS) system) to provide updated pricing and inventory information regarding the items offered by the stores. (Hager, Fig. 2) Hager discloses enabling a retailer to create, update and delete store promotions 500 and advertisements 502 that will be transmitted to consumers when they are using the shopping tool. (Hager, paragraph 0024) A tiered pricing scheme, such as a customer loyalty program, can be associated with the ESL system 202 and such information can be provided to the consumer. (Hager, paragraph 0028)

Hager discloses promotional (e.g., coupons), advertisements, and tiered pricing schemes associated with items offered for sale that are all provided by the retailers/manufacturers of the items presented for sale. The Hager shopping tool itself does not adjust or otherwise modify the pricing of the items as obtained from retailers/manufacturers. This is the case since Hager merely assembles an organized comparative shopping listing

of item provided by retailers/manufacturers with the internet as a delivery medium.

In contrast to Hager, claim 1 states, in relevant part,

adjusting, in response to obtaining said requested term of offer for said item, a second term of offer for said item from a host provider; and

presenting said requested term of offer for said item obtained from said at least one product/service provider and said adjusted second term of offer from said host provider to a data requestor device over a communications link.

Clearly, Applicants claim 1 has adjusting a second term of offer from a host provider. This aspect of Applicants' claimed invention is quite different than any step or aspect of Hager, and is neither disclosed or suggested by Hager. The Office Action argues that Hager adjusts an offer made by a store/manufacture by identifying sales and coupons for items provided by specific stores/manufacturers. In fact, the Hager shopping tool does not adjust the prices but instead merely presents a price listing of prices adjusted by the retailer/manufacture to account for any sales and coupons. Hager can provide updated price listings obtained from retailer databases and ESL (i.e., retailer/manufacture provided) databases, as illustrated at steps 404 and 406 of Fig. 4, but does not itself adjust the prices as argued in the Office Action.

Also, Hager does not provide a second term of offer.  
Hager does not disclose or suggest the host provider providing a second term of offer. Hager, at most, provides updated prices as obtained from the retailer/manufacturer. At no point in its disclosure does Hager disclose or suggest providing a second term of offer, as claimed by Applicants. To do so would teach away from the Hager stated objective of providing a comparative tool that delivers actual store pricing. (Hager, paragraph 0005)

Hager also fails to disclose or suggest Applicants' claimed aspect of presenting the requested term of offer for the item obtained from the at least one product/service provider and the adjusted second term of offer from the host provider to a data requestor device over a communications link. This is true since, as discussed above, Hager does not adjust a second term of offer obtained from the host provider.

Therefore, it is clear that Hager does not disclose or suggest, at least, the aspects of providing (1) a second term of offer from the host provider, (2) adjusting the second term of offer, and (3) presenting the requested term of offer from the at least one product/service provider and the adjusted second term of offer from the host provider to a data requestor over a communications link.

The Office Action's alleged motivation for modifying Hager to itself adjust a second term of offer is not supported, in any measure, by the disclosure of Hager. Again, Hager is a shopping tool that uses the internet to facilitate dissemination of a comparative shopping price

listing. Hager at no point discloses or suggests that the host provider itself adjust, modify, or even provide its own price for an item. This is true since the host provider of Hager is not disclosed or suggested as being a provider or even potential provider of products/services. The Office Action's purported motivation appears to be based on impermissible hindsight reasoning, based on Applicants' disclosure.

Therefore, it is respectfully requested that the 35 USC 103(a) rejection of claims 1-9, 11, and 13-15 be reconsidered and withdrawn.

Regarding the rejection of claim 10 under 35 USC 103(a) as being unpatentable over Hager in view of an obvious design choice, it is submitted that the aspect of determining if the host provider itself offers the item is not an obvious design choice. Applicants submit that the comparative shopping tool of Hager, and other such tools as described in Applicants' Background section of the application, provide a price listing of prices from a number of retailers/manufacturers that is known. These tools specifically provide the service/functionality of providing the comparative price listings. Such systems do not provide the dynamic pricing comparative pricing system of Applicants' claimed invention. The Hager system pricing is not dynamic, it merely provides an updated listing of prices offered by retailers/manufacturers. Even in the event Hager were to provide an item (not admitted by Applicants), there is no disclosure or suggestion therein for Hager to dynamically adjust the price, as claimed by

Applicants. Thus, the aspects of claim 10 are neither obvious nor inherent (i.e., necessary) in Hager.

Claim 12 was rejected under 35 USC 103(a) as being unpatentable over Hager as applied to claim 1 and in further view of Trubey et al. (hereinafter Trubey). This rejection is traversed.

Claim 12 depends from claim 1. The many shortcomings of Hager regarding claim 1 are fully discussed above. Trubey is cited and relied upon for disclosing that it is common for a host site to receive a commission or referral fee for helping buyers find products on the internet. The Office Action concludes that it would have been obvious for one of ordinary skill in the art at the time of the invention to modify Hager to have the second term of offer include a price margin for the host provide in order to pay the host provider for its valued added service.

Is it clear? { It is also noted that the commission or referral fee of Turbey is not the same as, or suggestive of, Applicants' claimed second term of offer of the item to include a minimum price margin for the host provider. The claimed second term of offer for the item is not a referral fee or a commission but a term of offer for the item itself.


As discussed in Applicants' reasoned arguments above regarding claim 1, Hager does not disclose providing a second term of offer from the host provider or adjusting the second term of offer. Therefore, combining Trubey with Hager fails to render claim 12 obvious.

Therefore, it should be clear that any reliance on Hager, even when combined with Trubey, would not render claim 12 obvious. Applicants respectfully submit that claim 12 is patentable over the alleged combination of Hager and Trubey.

For at least the reasons set forth above, it is submitted that the rejections of claim 1-15 under 35 U.S.C. 103(a) are erroneous and should be withdrawn.

For at least the reasons set forth above, it is submitted that this amendment places the application in condition for allowance. Accordingly, it is respectfully requested that the application be allowed and passed to issue.

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Charles N. J. Ruggiero  
Attorney for Applicant(s)  
Registration No. 28,068  
Ohlandt, Greeley, Ruggiero &  
Perle, L.L.P.  
One Landmark Square, 10<sup>th</sup> Floor  
Stamford, CT 06901-2682  
(203) 327-4500